

REMARKS

Claims 1-9 and 11-20 are currently pending and claim 10 has been cancelled through this amendment. Applicants have amended the claims in response to the Office Action mailed June 5, 2007. No new matter has been added. Applicants respectfully request reconsideration of the present application in light of the claim amendments and remarks below. Allowance of the claims is hereby earnestly solicited.

Drawings

The drawings, and specifically Figures 1, 6-8, 10-14 and 17-18, were objected to in the Office Action because the image quality of the grayscaled images made it difficult to distinguish specific elements. To overcome this objection the Applicants have submitted herewith Figures 1, 6-8, 10-14 and 17-18 on 11 replacement drawing sheets.

Claim Rejections

Claims 6-9, 12-15 and 18-20 were rejected under 35 USC 112, 2nd paragraph, for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claims 6, 12 and 15, Applicants respectfully point out that these claims are intended to be "Markush-type." The claims have been amended such that any lack of antecedent basis in claims 9, 18, 19, and 20 has been overcome. Applicants respectfully assert that the claims, as now amended, particularly point out and distinctly claim the subject matter which applicant regards as the invention such that the rejection should be withdrawn.

Claims 1-3, 10-11 and 16-19 were rejected under 35 USC 102(b) as being anticipated by US Patent No. 6,208,826 to Mathews et al. The Applicants respectfully traverse these rejections as set forth below.

In order for a reference to anticipate the present claimed invention under 35 U.S.C. 102(b), it must be shown that each and every element of the claim can be found in the reference. If it can be shown that one element of the claim is missing or not met by the cited reference, the rejection must be withdrawn as inappropriate.

Claim 1, as amended, is directed towards a system for accessing a surgical target site within a spine. The system includes a distraction assembly, a primary retractor assembly, and a supplemental retractor assembly. The distraction assembly is adapted to create a distraction corridor to the surgical target site. The primary retractor assembly has a handle assembly and a first retractor blade, a second retractor blade, and a third retractor blade removably coupled to the handle assembly. The handle assembly is adapted to move the first, second and third retractor blades between a closed position and an open position. The closed position is characterized by the first, second and third retractor blades being positioned generally adjacent to one another. The open position is characterized by the first, second and third retractor blades being positioned generally away from one another. The first, second and third retractor blades are adapted to be introduced simultaneously over the distraction assembly while in the closed position to the surgical target site and thereafter moved to the open position to create and maintain an operative corridor to the surgical target site. The supplemental retractor assembly has an arm with a fourth retractor blade removably coupled to the arm. The arm is adapted to be selectively coupled to the handle assembly of the primary retractor assembly. The fourth retractor blade is adapted to be introduced into the surgical target site and moved to expand the operative corridor.

The Mathews reference appears to be silent with regard to at least one element of independent claim 1 such that rejection for anticipation is improper and should be withdrawn. Among other voids, Mathews appears to be completely silent regarding the claimed feature of providing a primary retractor assembly with a handle assembly and a first retractor blade, a second retractor blade, and a third retractor blade removably coupled to the handle assembly, much less a handle assembly adapted to move the first, second and third retractor blades between a closed position and an open position. Nor does Mathews appear to disclose the claimed feature of a supplemental retractor assembly having an arm with a fourth retractor blade removably coupled to the arm, much less a fourth retractor blade adapted to be introduced into the surgical target site and moved to expand the operative corridor. Because Mathews fails to teach or disclose at least one claimed feature of independent claim 1, the Applicants respectfully submit that the rejection under 35 USC 102(b) should be withdrawn in favor of an indication of allowance which is hereby respectfully requested.

Claim 16, as now amended, is directed to a method of accessing a surgical target site within a spine, comprising the steps of: (a) creating a distraction corridor to the surgical target site; (b) removably coupling a first retractor blade, a second retractor blade, and a third retractor blade to a handle assembly capable of moving said first, second and third retractor blades from a closed position to an open position, said closed position being characterized by said first, second and third retractor blades being positioned generally adjacent to one another and said open position characterized by said first, second and third retractor blades being positioned generally away from one another; (c) simultaneously introducing said first, second, and third retractor blades into said distraction corridor while in said closed position; (d) actuating said handle assembly to open first, second and third retractor blades to create an operative corridor to said surgical target site; (e) coupling a fourth retractor blade to said handle assembly after said first, second, and third retractor blades have been moved to said open position; and (f) moving said fourth retractor blade to expand said operative corridor.

The Mathews reference similarly appears to be silent with regard to at least one element of independent claim 16 such that rejection for anticipation is improper and should be withdrawn. Among other voids, Mathews appears to be completely silent regarding the claimed feature of step (b) “removably coupling a first retractor blade, a second retractor blade, and a third retractor blade to a handle assembly capable of moving said first, second and third retractor blades from a closed position to an open position, said closed position being characterized by said first, second and third retractor blades being positioned generally adjacent to one another and said open position characterized by said first, second and third retractor blades being positioned generally away from one another,” much less the step (c) of “simultaneously introducing said first, second, and third retractor blades into said distraction corridor while in said closed position” or step (d) “actuating said handle assembly to open first, second and third retractor blades to create an operative corridor to said surgical target site. Mathews also appears to be silent regarding step (e) of “coupling a fourth retractor blade to said handle assembly after said first, second, and third retractor blades have been moved to said open position” and step (f) of “moving said fourth retractor blade to expand said operative corridor.” Because Mathews fails to teach or disclose at least one claimed feature of independent claim 16, the Applicants respectfully submit that the rejection under 35 USC 102(b) should be withdrawn in favor of an indication of allowance which is hereby respectfully requested.

Claims 2-3 and 11, being dependent upon and further limiting independent claim 1, should be allowable for the reasons set forth in support of the allowability of claim 1, as well as the additional recitations they contain. Claims 17-19, being dependent upon and further limiting independent claim 16, should be allowable for the reasons in support of the allowability of claim 16, as well as the additional recitations they contain.

The remaining claims were rejected under 35 USC 103 as being obvious over Mathews in view of a combination of the Arthur, Koros, Underwood, Shin and Streeter references. As set forth above, Mathews fails to teach multiple features of newly amended independent claims 1 and 16. The additional references listed above do not cure the voids in Mathews. As such, whether taken alone or in combination, the cited art do not appear to contain any requisite teaching, suggestion or motivation that would have lead someone of ordinary skill in the art to the present invention now claimed. Allowance of all currently pending claims is hereby earnestly solicited.

Claims 1-20 were rejected under the judicially created doctrine of non-statutory type double patenting over claims 1-23 of US Patent No. 7,207,949 ('949) in view of Mathews. The Applicants respectfully traverse these rejections. In order for a non-statutory obviousness type double patenting rejection to be appropriate at least one examined claim must be anticipated by, or be obvious, over the claims of the cited reference. Claims 1 and 16 in the present application each include at least one element not found within the '949 claims. Among others items, the claims of '949 do not include the claim 1 element of a "supplemental retractor assembly having an arm with a fourth retractor blade removably coupled to said arm," or the claim 16 element of "coupling a fourth retractor blade to said handle assembly after said first, second, and third retractor blades have been moved to said open position." As previously discussed, these limitations of claim 1 and 16 are also not found within the Mathews reference. Since each of independent claims 1 and 16 contain at least one element not found in either of the '949 claims or Mathews, claims 1 and 16 are neither anticipated nor made obvious by the '949 claims in view of Mathews. The Applicants respectfully submit that the double patenting rejection of claims 1 and 16 should be withdrawn in favor of an indication of allowance which is hereby respectfully requested. Claims 2-9 and 11-15, being dependent upon and further limiting independent claim 1,


should be allowable for the reasons set forth in support of the allowability of claim 1, as well as the additional recitations they contain. Claims 17-20, being dependent upon and further limiting independent claim 16, should be allowable for the reasons in support of the allowability of claim 16, as well as the additional recitations they contain.

Conclusion

Favorable consideration and allowance of the claims are respectfully requested. In the event that there are any questions concerning this Response to Office Action or the application in general, the Examiner is cordially invited to telephone the undersigned attorney so that prosecution may be expedited. If there any fees or overpayments associated with this amendment or any accompanying paper, the Commissioner is authorized to debit or credit USPTO Deposit Account No. 50-2040.

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

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